



GEORGIA M. PESTANA  
Corporation Counsel

THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, NY 10007

HANNAH J. SAROKIN  
(212) 356-8761  
hsarokin@law.nyc.gov

January 27, 2022

**BY ECF**

Hon. John P. Cronan  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *E.S., individually and on behalf of M.S. and N.S., children with disabilities*  
*v. New York City Department of Education*  
21-CV-9038

Your Honor:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York, Georgia M. Pestana, attorney for the Defendant New York City Department of Education (DOE) in the above-captioned action. I write, with the consent of Plaintiffs' counsel and pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure and Your Honor's Individual Rules and Practices 4.A-B, to respectfully request leave to file under seal the certified copy of the administrative record underlying this action, which is brought pursuant to the Individuals with Disabilities Education Act (IDEA).

The administrative record in this action is replete with confidential information, including the name, date of birth, and other pedigree information of the minor student, M.S., on whose behalf Plaintiffs bring this action challenging, in part, the underlying final administrative decision. This information should not be made public in compliance with Rule 5.2(a). *See* Fed. R. Civ. P. 5.2(a).

Additionally, the record contains "personally identifiable information" describing M.S.'s medical history and disabilities, in addition to M.S.'s educational records and information detailing the student's educational progress and history. These materials are confidential under the IDEA and the Family Educational Rights and Privacy Act (FERPA). 34 C.F.R. § 99.3 (defining personally identifiable information under FERPA), § 300.32 (including a "list of personal characteristics or other information that would make it possible to identity the child with reasonable certainty" as personally identifiable information under IDEA). Additionally, as

the underlying administrative proceeding is presumptively closed to the public pursuant to 34 C.F.R. § 300.512(c)(2), all documents recounting the proceeding should themselves be deemed confidential. *Id.* (permitting parents to choose whether a hearing is open or closed to the public). “For these reasons, courts in this Circuit have routinely allowed administrative records underlying IDEA cases to be filed under seal to protect the privacy interests of minor child plaintiffs.” *L.B. v. New York City Dept of Ed*, 15-CV-3176, 2015 U.S. Dist. LEXIS 127081, \*2 (S.D.N.Y. Sept. 22, 2015)(citing *C.L. v. Scarsdale Union Free Sch. Dist.*, 913 F. Supp. 2d 26, 30 (S.D.N.Y. 2012); *A.M. ex rel. Y.N. v. New York City Dep’t of Educ.*, 964 F. Supp. 2d 270, 277 (S.D.N.Y. 2013)). Therefore, Defendants believe that this information is appropriately filed under seal pursuant to *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (Countervailing factors weighing in favor of sealing include, *inter alia*, the privacy interests of those resisting disclosure).

Accordingly, Defendants submit that the *Lugosch* standard is met as protecting the privacy interests of the minor student in keeping confidential that child’s education and medical history constitutes a “compelling reason” to seal the record and outweighs the public’s interest in access. *Lugosch*, 435 F.3d at 121. As such, Defendants respectfully request, with consent of Plaintiffs’ counsel, leave to file the certified administrative record in this action under seal.

Thank you for your consideration of this request.

Respectfully submitted,

s/

Hannah J. Sarokin

Assistant Corporation Counsel

cc: Benjamin M. Kopp, Esq. (by ECF)  
Plaintiffs’ counsel

The request is granted. Defendants may file the certified administrative record under seal.

SO ORDERED.

Date: February 2, 2022  
New York, New York



JOHN P. CRONAN  
United States District Judge